



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/171698

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on March 02, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined the petitioner's cost share in the amount of \$192.31 effective November 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner is enrolled in and receiving services through the Family Care Program.
3. At the petitioner's renewal the income maintenance agency learned that the petitioner receives monthly VA benefits in the amount of \$1,116. The agency had not previously counted this

income. In addition to the petitioner's VA benefits, she receives monthly social security income in the amount of \$1,179. The petitioner's total monthly gross income is \$2,295.

4. On October 19, 2015 the agency sent the petitioner a notice stating that effective November 1, 2015 she would be responsible for a monthly cost share in the amount of \$897.31.
5. The petitioner provided additional information showing that she was responsible for a total shelter and utility costs of \$1520.30. She also provided verification that her medical remedial expenses were \$19.39 each month.
6. The agency re-determined the petitioner's monthly cost share amount with her shelter and medical expenses. With these expenses the petitioner's cost share amount was \$192.31 effective November 1, 2015.
7. On January 29, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
8. On February 23, 2016 the agency sent the petitioner a letter stating how they determined her monthly cost share amount of \$192.31.

DISCUSSION

The Family Care program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter HFS 10.

An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly cost share. Wis. Stat., §46.286(2)(a). A recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1.b. Such an appeal must be made within 45 days of the action. Id.

In this case the original notice was sent on October 19, 2015. The petitioner did not request a fair hearing until January 29, 2016. Ordinarily, I would find that the petitioner's Request for Hearing was untimely. The issue here is that the original notice stated a cost share amount of \$897.31. At some point the petitioner provided additional information, and this cost share amount was re-determined. The most recent notice of the lower cost share amount is a letter dated February 23, 2016. This letter does not have the petitioner's appeal deadline; however, no other notice is included with the lower cost share amount. The petitioner's Request for Fair Hearing was received before this February 2016 letter, and thus I must conclude that her appeal is timely. Given that the appeal is timely, the only issue for determination is whether the agency correctly determined the petitioner's monthly cost amount of \$192.31 effective November 1, 2015.

Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance is \$913, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses above \$350 per month. MA Handbook, App. 28.8.3.1. Housing expenses include rent, rent or homeowners insurance, mortgage payments, property taxes, and utilities, specifically heat, water, sewer, and electricity. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

I have reviewed the agency's calculations in this case, and the calculations are correct. The petitioner's cost share increased because the agency had previously failed to budget the petitioner's VA income. The petitioner argues that this income was previously reported to the agency, and that not including this

income previously was agency error. The agency seems to implicitly argue that this income was never reported. The previous cost share amount or lack thereof is not for my determination. The only issue for this appeal is whether the agency correctly calculated the petitioner's cost share amount effective November 1, 2015. I find that they have.

At the hearing the petitioner's representatives also stated that there were additional medical remedial expenses that had not yet been reported and verified by the agency. Once those expenses are reported and verified the agency may reduce the petitioner's cost share amount with a three month back date. Based upon the information already reported to the agency, the agency correctly determined the petitioner's cost share amount effective November 1, 2015.

CONCLUSIONS OF LAW

The agency correctly determined the petitioner's cost share in the amount of \$192.31 effective November 1, 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

...

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 29, 2016.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability